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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

THIRD APPELLATE DISTRICT

(San Joaquin)

In re A.R., a Person Coming Under the Juvenile Court
Law.

C076964

SAN JOAQUIN COUNTY HUMAN SERVICES
AGENCY,

(Super. Ct. No. J06267)

Plaintiff and Respondent,

v.

E.J.,

Defendant and Appellant.

E.J., mother of the minor, appeals from the order of the juvenile court denying her petition for modification. (Welf. & Inst. Code, §§ 388, 395.)¹ She contends the juvenile court abused its discretion in summarily denying her petition without a hearing. Many of the facts raised in Mother's petition for modification existed at the time services were

¹ Undesignated statutory references are to the Welfare and Institutions Code.

initially bypassed and, thus, did not reflect a change in circumstances. And the few new facts presented were insufficient to warrant modification of the order bypassing services. For these reasons we affirm.

FACTUAL AND PROCEDURAL BACKGROUND

Minor A.R. was born in April 2012. Although she was full term, she weighed less than four pounds at birth, had placenta previa, and was born with symptoms of fetal alcohol syndrome. Mother admitted to drinking alcohol during her pregnancy. For three months after the minor's birth, mother agreed to participate in voluntary family maintenance. Thereafter, the case was closed.

On March 28, 2013, eight months after voluntary services were closed, the minor was taken into protective custody. Mother had been intoxicated, unable to maintain her balance, and dropped the minor twice to the ground, causing the minor to sustain injury to her head. Mother was charged with public intoxication and felony child abuse.

On April 2, 2013, San Joaquin County Human Services Agency (the Agency) filed a section 300 petition on behalf of the minor. In addition to allegations relating to the March 28, 2013, incident, the petition alleged that mother had an extensive history of substance abuse, primarily alcohol, which had resulted in the removal and termination of services for three of the minor's half siblings, and the termination of parental rights to a fourth half sibling.

Mother had 22 prior referrals with Child Protective Services in multiple counties. The referrals related, in large part, to mother's longstanding history of substance abuse, which resulted in, inter alia: (1) substantiated allegations of caretaker incapacity in 1997; (2) the minor's second-oldest half sibling being born drug exposed in 2000; (3) a DUI accident with one of her children in the car in 2009; (4) a drunken physical altercation in the presence of her children in 2012; and (5) a drunken physical assault upon her 14-year-old niece in 2012.

The juvenile court sustained the allegations in the petition and, on June 25, 2013, mother was ordered to attend dependency drug court. Mother, who had been incarcerated since the minor was placed into protective custody, was released from incarceration on July 19, 2013. She was placed on probation and ordered to attend a 52-week parenting program to address child abuse/endangerment and a residential drug/alcohol treatment program. There was a criminal protective order in effect, so mother was not visiting the minor.

On August 8, 2013, the Agency filed a disposition report recommending mother be bypassed for reunification services pursuant to section 361.5, subdivisions (b)(10) [termination of reunification services with half siblings], and (b)(11) [termination of parental rights for half siblings], as she had failed to make reasonable efforts to treat her ongoing and long history of substance abuse.

The disposition hearing commenced on November 4, 2013. Mother testified regarding her previous efforts in treatment programs and her relapses. She also testified that she was participating in dependency drug court and in the New Directions Drug Treatment Program. She was scheduled to complete the six-month residential portion of New Directions on January 24, 2014, and had completed all of the required classes for the program. She had begun taking the 52-week parenting program and would be getting her completion certificate for a different parenting program that week. She was drug testing and had an AA sponsor.

At the hearing, the juvenile court inquired about the evidence that mother had failed to complete a drug/alcohol treatment program in 2012 in connection with a criminal conviction. The matter was continued to allow for additional evidence as to whether that program was court ordered or undertaken voluntarily by mother. The juvenile court also authorized mother to begin supervised visitation, once per week, to commence after she got the criminal protective order lifted.

On December 2, 2013, the Agency requested mother also be bypassed for services pursuant to section 361.5, subdivision (b)(13) [resisted prior court-ordered treatment]. At the continued disposition hearing on December 12, 2013, the juvenile court had been provided a copy of earlier dependency proceedings with respect to the minor's half siblings and a copy of the criminal proceedings from 2012, to establish the elements of the bypass provisions. The juvenile court noted that it appeared that the 2012 treatment program had been court ordered, and continued the matter for mother to formally address the issue. Mother had been visiting minor weekly and requested an increase in visitation to two visits per week. The court declined to order an increase in visitation unless, and until, it made a determination on the petition to bypass mother for services.

Subsequently, on February 6, 2014, the juvenile court declared the minor a dependent child of the court and denied mother reunification services pursuant to section 361.5, subdivisions (b)(10) and (b)(11).²

On April 22, 2014, mother filed a section 388 petition for modification of the February 6, 2014, order denying her reunification services. We incorporate the allegations in support of the petition into our discussion of mother's contention on appeal but she, generally, contended that new information showed she was bonded to the minor, was committed to maintaining her sobriety, had made progress to demonstrate she could provide the minor a safe home, and that reunification services would provide the minor an opportunity to return to her custody. The Agency and minor opposed the petition.

The juvenile court summarily denied mother's petition stating, "There is no prima facie evidence to support the conclusionary statements of changed circumstance. In fact some evidence presented was available at the time of trial. At best the circumstances are

² The written order prepared by the Agency and signed by the juvenile court listed only section 361.5, subdivision (b)(10) and (11), but the juvenile court made it clear in its oral disposition that section 361.5, subdivision (b)(13) was applicable as well.

changing. Further, there is not a showing that granting the request is in the minor's best interest."

DISCUSSION

Mother contends that the court erroneously denied her petition for modification without a hearing. We find no error.

A parent may bring a petition for modification of any order of the juvenile court pursuant to section 388 based on new evidence or a showing of changed circumstances.³ The petition for modification must include facts showing a change in circumstances and that "the best interests of the child may be promoted by the proposed change of order." (*In re Daijah T.* (2000) 83 Cal.App.4th 666, 672.)

In considering a petition for modification, the juvenile court's first task is to determine whether there is a right to an evidentiary hearing or whether the petition may be denied without a hearing. (*In re Jeremy W.* (1992) 3 Cal.App.4th 1407, 1414; Cal. Rules of Court, rule 1432(b).) To establish the right to an evidentiary hearing, the petition must include facts that make a prima facie showing of a change in circumstances and must also include facts showing that "the best interests of the child may be promoted by the proposed change of order." (*In re Daijah T.*, *supra*, 83 Cal.App.4th at pp. 672-673; see also *In re Zachary G.* (1999) 77 Cal.App.4th 799, 806.) More than general conclusory allegations are required to make this showing even when the petition is liberally construed. (*In re Edward H.* (1996) 43 Cal.App.4th 584, 593.)

³ Section 388 provides, in part: "Any parent . . . may, upon grounds of change of circumstance or new evidence, petition the court in the same action in which the child was found to be a dependent child of the juvenile court . . . for a hearing to change, modify, or set aside any order of court previously made or to terminate the jurisdiction of the court. . . . [¶] . . . [¶] . . . If it appears that the best interests of the child may be promoted by the proposed change of order, . . . recognition of a sibling relationship, [or] termination of jurisdiction, . . . the court shall order that a hearing be held" (§ 388, subds. (a)(1), (d).)

“The prima facie requirement is not met unless the facts alleged, if supported by evidence . . . would sustain a favorable decision on the petition.” (*In re Zachary G.*, *supra*, 77 Cal.App.4th at p. 806.) We review the juvenile court’s summary denial of a section 388 petition for abuse of discretion. (*In re Jeremy W.*, *supra*, 3 Cal.App.4th at p. 1413; see also *In re Josiah S.* (2002) 102 Cal.App.4th 403, 419 [hence, if two inferences may be deduced from the facts, we do not substitute our decision for that of the juvenile court’s]; see also *In re Angel B.* (2002) 97 Cal.App.4th 454, 460.)

On its face, the petition here, filed only two and a half months after the order bypassing reunification services, does not meet the required burden. As the juvenile court found, the facts alleged in the petition did not provide new evidence or evidence sufficient to establish a change of circumstances warranting modification of the order bypassing services.

In support of the petition, mother alleged that she had “continued in the New Directions Drug Treatment Program and Dependency Drug Court.” Mother, however, was participating in both programs at the time of the February 6, 2014, order bypassing services of which she was seeking modification. In fact, she was scheduled to, and did, complete both the residential portion of the New Directions Drug Treatment Program and the dependency drug court on January 24, 2014, prior to the juvenile court’s order bypassing services. Thus, these facts were neither new nor indicative of a change of circumstances.

Mother also alleged, in support of the petition for modification, that she had an AA sponsor. Mother, however, already had the AA sponsor at the time of the disposition hearing and juvenile court’s order bypassing services. Mother alleged that she had been visiting the minor, but she had been doing so since the restraining order was lifted, which was also prior to the juvenile court’s order bypassing services. Thus, these facts showed only that mother was maintaining the status quo, and were neither new nor indicative of a change of circumstances.

Mother also alleged she had completed a parenting course at the women's center, but the evidence presented at the disposition hearing and in support of the petition for modification was that she was supposed to have completed that course in November 2013—several months before the order bypassing services. Finally, mother alleged she had completed 38 of 52 parenting classes, which were ordered as part of her criminal case. But, again, mother began attending those classes on October 14, 2013, and was attending them at the time of the disposition hearing and order bypassing services.⁴ Thus, like the others, none of these facts were new or indicative of a change of circumstances.

The only allegations of new evidence, or evidence of any change in circumstances, was that mother was attending church, had obtained a driver's license and insurance, had left residential care to begin after care (as scheduled), and obtained housing with her boyfriend. There was also an allegation that mother had obtained mental health services. The evidence mother provided in support of that allegation stated that she had signed up for six sessions, to begin on March 31, 2014, and end on June 30, 2014. Finally, there was an allegation that mother was attending domestic violence counseling. But the evidence she provided in support of that allegation showed attendance on only two occasions (and we note that one occasion was alleged to be *after* the date the verification of attendance was prepared). These allegations were insufficient to warrant a hearing because, even if established by further evidence, they would not warrant modification of the order bypassing services.

Mother was bypassed for services because she had failed to make a reasonable effort to treat her drug/alcohol abuse after failing to reunify with, and losing parental rights to, the minor's half siblings. She has a long history of extensive drug and alcohol

⁴ We also note that mother had previously completed a 52-week parenting course in connection with the dependency proceedings regarding her second-oldest child.

abuse, had previously resisted court-ordered treatment, and had been engaging in a cycle of treatment, recovery, and relapse. The new evidence alleged does not substantially change the circumstances surrounding the appropriateness of reunification services. As found by the juvenile court, most of the allegations in the petition showed only that mother was continuing to participate in the programs in which she was participating at the time of the disposition hearing and order bypassing services.

In sum, mother did not make a prima facie showing of a change of circumstances or new evidence to warrant holding an evidentiary hearing. We find no abuse of discretion.

DISPOSITION

The juvenile court's order is affirmed.

RENNER, J.

We concur:

HULL, Acting P. J.

ROBIE, J.